

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

2012 MAR 19 AM 10 08

STEPHAN HARRIS, CLERK
CODY, WYOMING

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

JIMMIE G. BILES, JR., M.D., a resident
of Wyoming,

Plaintiff,

vs.

LISA SHAURETTE FALLON, a
resident of Indiana,

Defendant.

Case No. 11-CV-294-F

ORDER REQUIRING PRODUCTION OF AFFIDAVIT

On March 16, 2012, the Court held a telephone hearing in accordance with Administrative General Order 2011-08 to resolve a discovery dispute between Defendant and the Wyoming Board of Medicine. Defendant served on the Wyoming Board of Medicine a subpoena for any and all complaints against Jimmie G. Biles, Jr. M.D. The Wyoming Board of Medicine objected to Defendants subpoena arguing that the information is confidential according to Wyo. Stat. Ann. § 33-26-408 and the Board's rules.


"Discovery in federal court is governed by the Federal Rules of Civil Procedure, regardless of whether federal jurisdiction is based on federal question or diversity of citizenship." *Spacecon Speciality Contractors, LLC v. Besinger*, No. 09-cv-02080-REB-

KLM, 2010 U.S. Dist. LEXIS 111092, * at 12-13 (D. Colo. Oct. 1, 2010); *see Atteberry v. Longmont United Hosp.*, 221 F.R.D. 644, 646 (D. Colo. 2004). Although state statutes may create evidentiary privileges, the Court is only bound by state statutory privileges to the extent these privileges are also permitted as a matter of federal law. *Id.*

Here, the Court interprets Wyo. Stat. Ann. § 33-26-408 as creating confidentiality of information rather than a privilege. Furthermore, to the extent the statute creates a privilege under state law, the Wyoming Board of Medicine has not demonstrated that the privilege is also permitted as a matter of federal law. Accordingly, the Court finds that for the purposes of this action, Wyo. Stat. Ann. § 33-26-408 does not create a privilege to prevent discovery of the information sought by Defendant.

However, the Court recognizes the Wyoming Board of Medicine's interest in keeping this information confidential. Therefore, the Court will not order the Wyoming Board of Medicine to turn over all complaints against Dr. Biles. Instead, IT IS ORDERED that the Wyoming Board of Medicine shall produce an affidavit, by the executive director, that identifies the number of complaints filed against Jimmie G. Biles, Jr. M.D., by a physician or a physician's assistant.

Dated this 19 day of March, 2012.


NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE